

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MOBIUS MANAGEMENT SYSTEMS, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 05-346 SLR
)	
ACARTUS, INC. and EMC CORPORATION,)	
)	
Defendants.)	
)	

**JOINT MOTION FOR EXTENSION OF DISCOVERY
AND SUMMARY JUDGMENT DEADLINES**

Plaintiff Mobius Management Systems, Inc. and defendants Acartus, Inc. and EMC, Corporation through their undersigned counsel, jointly move for an extension of the discovery and summary judgment deadlines in this action by sixty (60) days. The parties ask that the Court further approve this extension without altering the trial date (or, alternatively, with as short an extension of the trial date as possible). The grounds for this motion are as follows:

1. This is a case involving alleged trademark infringement, trade secret misappropriation, false advertising and other state law claims. The Scheduling Order (D.I. 55) entered on February 1, 2006, provides that all summary judgment motions shall be served and filed with an opening brief no later than January 31, 2007. The Stipulation and Order Modifying Discovery Schedule (D.I. 70) entered on August 18, 2006, provides that all fact discovery shall be completed by December 1, 2006; all expert discovery shall be completed by January 24, 2007; expert reports on issues for which any party has the burden of fact shall be submitted by December 8, 2006; and opposing expert reports shall be submitted by January 8, 2007. A two week jury trial is scheduled to commence on August 6, 2007. (D.I. 55).

2. By this motion, the parties jointly seek to extend the discovery and summary judgment deadlines by sixty (60) days, without modifying the trial date. As a result of this extension, the new deadlines would be as follows:

a. All fact discovery shall be commenced in time to be completed by February 1, 2007, and all expert discovery shall be commenced in time to be completed by March 26, 2007.

b. Reports from retained experts under Rule 26(a)(2) on issues for which any party has the burden of proof shall be due by February 8, 2007, and opposing expert reports due by March 8, 2007.

c. All summary judgment motions shall be served and filed with an opening brief no later than April 2, 2007.

3. The parties jointly request this extension because discovery is ongoing, not as a result of any effort to delay by the parties, but because all discovery could not be completed within the allotted time. The parties have conducted substantial document discovery, and several depositions have already been taken. However, substantial discovery still needs to occur, including a number of fact depositions. Those depositions include several third party witnesses, whose schedules need to be coordinated.

4. In order to have the benefit of all fact and expert discovery when making a decision whether to file any summary judgment motions, and to be able to use the discovery in briefing any such motion, the requested extension includes an extension of the summary judgment briefing by the same period of time (sixty (60) days). The parties are hopeful that this extension would still permit any motions for summary judgment to be resolved before the current trial date, or one rescheduled a short time thereafter, without undue burden on the Court. In this

vein, plaintiff notes that it does not currently intend to file a motion for summary judgment. Defendants reserve their right to seek summary judgment.

5. The parties recognize that it is the Court's stated practice to remove a trial date from the calendar when a request is made to extend the time for summary judgment briefing. However, the parties request an exception from that practice, such that either the trial date be maintained if not unduly burdensome to the Court, or alternatively, that the trial date be extended in a timeframe commensurate with the extension of the other dates requested in this motion (i.e. in the timeframe of October – December 2007). The parties would appreciate having a date certain for the trial for purposes of scheduling, including for witnesses, and for planning and preparing for trial.

WHEREFORE, the parties jointly request that the Court enter an Order in the form attached hereto, or in a form that would set a new trial date.

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